



**U.S. Department of the Interior
Office of Inspector General**

AUDIT REPORT

**SELECTED ACTIVITIES ON BONDING
FOR OIL AND GAS LEASES
ON INDIAN TRUST LANDS
BUREAU OF INDIAN AFFAIRS
BUREAU OF LAND MANAGEMENT**

**REPORT NO. 01-I-421
SEPTEMBER 2001**

EXECUTIVE SUMMARY

RESULTS IN BRIEF

The Bureau of Indian Affairs (BIA) and the Bureau of Land Management (BLM) need to improve the administration of bonding for oil and gas leases on Indian trust lands. To adequately protect the Department from potential financial liability, the BIA needs to: (1) obtain sufficient bond coverage, (2) ensure sufficient bond coverage is maintained when individual leases are assigned to successor lessees, and (3) establish a central database to monitor bond coverage for leases. The BLM needs to perform required evaluations of financial liability for individual leases or provide the BIA with the information necessary for the BIA to determine sufficient bond amounts. The amount of bonding should be enough to ensure compliance with all terms and conditions of the lease, including plugging and abandoning oil and gas wells and reclaiming the leased Trust land.

DISCUSSION

Both the BIA and the BLM stated that these tasks weren't accomplished because of a lack of resources. Also both acknowledged a reluctance to enforce bonding requirements that might constrain economic development of Indian trust lands or permanently close wells. Adequate resolution of this matter is critical because the Department may be responsible for as much as \$583.9 million to plug and abandon all oil and gas wells on Indian trust lands.

Management Actions

The BIA concurred with two of the three recommendations directed at its operations. For the third recommendation the BIA offered an acceptable alternative solution. However, the BIA should ensure that collective and individual bonds holders are specifically included in its review and revision of trust regulations.

The BLM, although it concurred with the one recommendation directed at its operations, did not fully address actions it would take to improve bond coverage. The BLM reiterated that its ability to perform this work is affected by insufficient staffing and budget allocations for its individual offices. We have requested the BLM reconsider its response.



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL

Central Region
134 Union Blvd., Suite 510
Lakewood, Colorado 80228

Audit Report

September 24, 2001

Memorandum

To: Assistant Secretary for Indian Affairs
Assistant Secretary for Land and Minerals Management

From: Anne L. Richards *Anne L. Richards*
Regional Audit Manager

Subject: Audit Report on Selected Activities on Bonding for Oil and Gas Leases on Indian Trust Lands (Report No. 01-I-421)

We reviewed selected activities regarding the bonding for oil and gas leases on Indian trust lands. Our objective was to determine whether the Bureau of Indian Affairs (BIA) and the Bureau of Land Management (BLM) administered the bonding for oil and gas leases on Indian trust lands in a manner to protect the Department from incurring the cost for plugging and abandoning oil and gas wells and reclaiming the lands. In order to protect the Department, the amount of bonding should be enough to ensure compliance with all terms and conditions of the lease, including plugging and abandoning oil and gas wells and reclaiming the leased Trust land.

Results of Audit

The BIA and the BLM need to improve the administration of bonding for oil and gas leases on Indian trust lands. To adequately protect the Department from potential financial liability the BIA needs to:

- Obtain sufficient bond coverage.
- Ensure sufficient bond coverage is maintained when individual leases are assigned to successor lessees.
- Establish a central database to monitor bond coverage for leases.

The BLM needs to perform required evaluations of financial liability for individual leases or provide the BIA with information necessary for the BIA to determine sufficient bond

amounts. Both the BIA and the BLM stated that these tasks weren't accomplished because of a lack of resources. Both also acknowledged a reluctance to enforce bonding requirements that might constrain economic development of Indian trust lands or permanently close wells. Adequate resolution of this matter is critical because the Department may be responsible for as much as \$583.9 million (see Appendix 2) to plug and abandon all oil and gas wells on Indian trust lands.

Background

Indian trust lands are those lands set aside for Indians, whether by treaty, statute, or executive order, to which the United States holds legal title. Trust lands include both tribal lands and lands allotted to individual Indians. Oil and gas leases on tribal lands are authorized under the provisions of the Act of May 11, 1938, while oil and gas leases on Indian allotted lands are authorized under the provisions of the Act of March 3, 1909 as amended (both laws are codified in 25 U.S.C. § 396). Under these laws and the Indian Mineral Development Act of 1982 (codified in 25 U.S.C. § 2101), the United States affirms its fiduciary responsibility for the Indian trust lands and places that responsibility under the administration of the Secretary of the Interior.

Trust land identified for economic development is advertised as available to be leased for the exploration, development, and production of fluid minerals. The successful bidder is given a lease with a nominal primary term, usually 3, 5, or 10 years, to begin production of oil and gas reserves discovered on the leased land. The lease provides for indefinite extension of the term for successful discovery and production of oil and gas while oil and gas are produced. Before the lease is approved and prior to any exploration or drilling, the lessee must post surety bonds or other approved collateral securities sufficient to provide for unpaid royalties, plugging and abandonment of wells, surface reclamation, and any fines and penalties. Failure to satisfactorily honor the lease in its primary or extended term may result in lease cancellation and bond forfeiture, with the bond proceeds used to settle outstanding debts and obligations or defray the costs of plugging and abandoning the well and restoring the trust land.

The amount and types of bonding required vary based on the location and the number of leases held by an operator. Under the Code of Federal Regulations (25 CFR 211.24), nationwide bonds, which secure a company's operations on Indian lands anywhere within the United States, are \$150,000, and collective bonds, which secure a company's operations on Indian lands anywhere within the jurisdiction of a specific BIA regional office, are \$75,000. Individual lease bonds secure a company's operations on a lease-by-lease basis. The amount of bonding required for individual bonds is determined by the local BIA office but is required to be sufficient to ensure compliance with all the terms and conditions of the lease. Regional offices or agencies generally establish a policy that sets minimum individual bond amounts, which range from \$2,500 to \$15,000. In addition, under 25 CFR 211.24(e), the BIA has the authority to increase the required amount in any particular case when, at the discretion of the Secretary of the Interior, a bond is determined to not be sufficient to cover the liabilities under the lease. Nationwide bonds are administered and maintained by the BIA's Office of Trust Services in Washington, D.C.;

collective bonds by the respective BIA regional office; and individual lease bonds by the respective agency office. With the approval of the BIA, lessees may also post personal bonds, which include irrevocable letters of credit, Treasury bills, and cash bonds, in lieu of a surety bond.

Under a 1991 Tripartite Memorandum of Understanding, three Department of the Interior agencies are involved in the administration of oil and gas leases on Indian trust lands. The responsibilities of the three agencies as related to bonding on Indian trust lands are as follows:

- The BIA negotiates and approves the terms of the lease, including determining the required bond amount; approves lease assignments; and cancels leases that have expired, been breached, or have unhealthy or hazardous conditions at the lease site which necessitate ending the lease. The BIA takes actions to collect bonds when leases are canceled if the lease site has not been reclaimed and wells properly plugged.

- The BLM provides technical assistance to the BIA, including biennial reviews of leases to determine inherent financial risks to the Department, and recommends the cancellation of leases and the collection of bond proceeds.

- The MMS collects and disburses revenues from mineral leasing and production for on-shore leases, including leases for American Indian tribes and allottees and states. The MMS's responsibilities include sending notices of non-compliance for delinquent royalties to Indian trust land lessees and notifying the Department of Justice, the BIA, and the BLM. The MMS requests the BIA to proceed with lease cancellation and bond collection.

Both the BIA and the BLM maintain lease management systems. The BIA system, which is currently being automated, relies on extensive manual files maintained at the respective BIA agencies responsible for trust land. The BLM maintains data on oil and gas leases on Indian trust lands in its Automated Fluid Minerals Support System (AFMSS). As of August 31, 1999, the AFMSS included data on approximately 2,473 leases relating to 11,103 wells (including 2,458 inactive wells) on tribal and allotted Indian trust land.

Discussion

Bureau of Indian Affairs. The BIA hasn't obtained sufficient bond amounts to protect the Department from potential financial liability. The BIA has approved leases without assessing the extent of the Department's liability to determine appropriate bond amounts. Further, the BIA doesn't have adequate policies and procedures to protect the Department from additional liability when large and well-capitalized firms assign their oil and gas leases to smaller and less-capitalized oil and gas production companies. The BIA also doesn't have a central database of leases to monitor bond coverage for leases.

Bond Coverage. The BIA is not obtaining or maintaining sufficient bond coverage for oil and gas leases on Indian trust lands. We reviewed 30 of 982 active leases at the three BIA agency offices visited. Of the 30 active leases, we found that 17 had insufficient

bond coverage. The bond coverage for these 17 leases was only \$786,000 while we estimated¹ that the liability to plug and abandon the associated wells was \$3,784,000, resulting in a \$2.998 million shortfall to potentially be incurred by the Department. We also reviewed the bond coverage for 11 canceled leases and determined that bonding was insufficient for 8 of the leases. We estimated the bond coverage to be \$245,000. The BIA has already spent \$250,500 (see Appendix 3) related to plugging and abandoning wells and reclaiming the lands from these leases, and it has estimated that it will spend at least another \$301,000 to complete the work. The insufficient bond coverage occurred primarily because the standard bond amounts were insufficient and the BIA hadn't pursued supplemental bonding. BIA management officials stated that the workload exceeded the resources available to evaluate the adequacy of bond amounts and the need for increased or supplemental bonding. Also, the BIA relies on the BLM's estimate of the extent of liability under each lease to determine a reasonable bond increase. The BLM did not always provide a biennial evaluation of financial liability for leases on Indian trust lands, as required. This issue is discussed in further detail in a subsequent paragraph.

Because the potential financial liability to the Department is significant, the BIA needs to ensure that sufficient bond coverage is obtained and maintained for all leases on Indian trust lands.

Assignments to Smaller Companies. The BIA's policies and procedures weren't adequate to ensure that sufficient bond coverage was maintained when leases were assigned from large and well-capitalized entities to smaller and less financially capable companies. Of the 17 active leases with inadequate bond coverage discussed above, 6 leases had been assigned from a large to a smaller company. The bond coverage for these 6 leases was only \$357,000 while we estimated¹ that the potential liability was \$1.3 million, resulting in a potential shortfall of \$943,000. The BIA's policies and procedures did not specifically require or prescribe either periodic reviews or assessments of lessee liability prior to approval of lease assignments. The BIA doesn't have a policy requiring the assignor to retain the liability for shut-in and temporarily abandoned wells at the time of lease assignment.

Although the BIA has the authority to require supplemental bonding to cover this liability, it does not routinely do so. BIA personnel told us that obtaining such supplemental bonding from the smaller operators under existing leases was highly improbable because there were fewer bonding companies issuing new bonds and the cost of obtaining bonds was high. In addition to the concern about the lessees' economic capability to post bonds sufficient to cover estimated liabilities, BIA personnel were reluctant to have non-producing wells plugged because of the high cost of developing a well and the loss of future production royalties to Indian trust land beneficiaries.

Because insufficient bonds are a concern when leases are assigned from large to small companies and because obtaining sufficient bonds is difficult for small companies, we

¹We estimated the liability by multiplying the standard cost to plug and abandon wells, as determined by the BLM for various well depths, by the number of producing, shut-in, or temporarily abandoned wells at each depth for the leases. We obtained well depth information from well log data.

believe that the BIA should consider alternative approaches to protect the Department from potential liability. BIA personnel said that they believe a fund to pay costs to plug and abandon orphaned wells should be established for leases on Indian trust lands. The BLM was pursuing a rule² to establish a contingency fund based on fees paid by lessees, and the BIA should ensure that this rule, if established, or a similar rule of its own be applied to Indian trust land leases. However, based on our analysis of the proposed rule we believe that additional actions are warranted. The BIA should require the assignor to retain some liability for wells that are not producing (shut-in or temporarily abandoned) at the time of the assignment.

Central Database. Responsibility for managing bonds was dispersed throughout the BIA, thus making bond inventories difficult to control. The BIA didn't have a central database to control the bonds. Multiple offices were managing bond inventories using different tools and techniques, such as lists of bonds within their jurisdiction or manual filing systems. We found that these techniques were not consistent or adequate. For example, some offices such as the Southern Plains Regional Office, which managed collective bonds, did not maintain current lists of collective and individual bonds for its areas of jurisdiction. BIA management could not obtain or provide summary data to evaluate the sufficiency of bond amounts for its bonding activities. Personnel at the Concho Agency said that the new automated system, the Trust Asset and Accounting Management System (TAAMS), would provide the accounting and control needed for bonds and lease liabilities. The BIA should ensure that the issue is addressed in the implementation planning for TAAMS or an adequate management information system is implemented to track and manage bonds.

Bureau of Land Management. The BLM hasn't always completed its required biennial reviews of leases to determine the inherent financial risks to the Department. These reviews are necessary for the BIA to obtain and maintain sufficient bond coverage to obviate the Department's potential liability. The BLM is responsible for providing technical assistance to the BIA to help establish appropriate bonding amounts for oil and gas wells on Indian trust lands. The BLM's policies and procedures for such reviews are contained in BLM Instruction Memorandum No. 90-373, issued on February 23, 1990. BLM officials said that their workload exceeds the resources available to complete these reviews. The BLM's expertise is needed to assess potential liabilities for oil and gas wells on Indian trust lands. Without this information, the BIA cannot be assured of obtaining or maintaining sufficient bond coverage. If the BLM cannot meet its requirement to perform biennial reviews, it should at least ensure that liability reviews are performed for all leases proposed for assignment.

²The BLM published the proposed rule in the "Federal Register" on December 3, 1998 (63 FR 66839) for onshore oil and gas leasing operations. As of February 2001, the proposed rule had undergone two public comment periods, but the rule had been withdrawn to undergo policy review by the new administration.

Other Matters

Financial Responsibility Qualification

Bonding regulations under 25 CFR 211.24 as revised on April 1, 1997, which establish minimum amounts for nationwide, collective, and individual bonds, were not adequate to cover the liabilities. Specifically, nationwide bonds were often posted for companies with more than 100 well operations under a single bond. This practice may expose the Department to unnecessary financial liability. In determining this liability, we analyzed the leases for the 77 companies covered by nationwide bonds.

We determined that, of the 77 companies operating under nationwide bonds, only 12 companies had adequate bond coverage for their estimated liabilities. The other 65 companies held leases without adequate coverage; that is, they posted bonds of \$12.1 million which covered only 3.5 percent of the estimated \$343.5 million outstanding liability attributable to nationwide bonds. These companies were permitted to operate without demonstrating their financial capability to be responsible for the estimated liabilities. In that regard, we noted that the MMS and the Environmental Protection Agency require a review of the financial responsibility of the operator prior to reducing or waiving the requirement for either a supplemental bond or an increased bond amount for the full amount of the estimated liability on an injection well or offshore well operation. We believe that BIA should implement a similar review.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs:

1. Ensure that sufficient bonding is obtained to protect the Department from the potential liability for plugging wells and reclaiming the Indian trust lands as determined by the financial liability reviews. The Assistant Secretary should ensure that collective and individual bondholders are considered when it performs its analysis and revision of trust regulations, which it proposed as an alternative solution to performing financial liability reviews of oil companies.
2. Establish a contingency fund to protect the Department from potential liability in those cases where companies do not have sufficient bonding coverage to plug wells and reclaim the Indian trust lands.
3. Hold assignors jointly liable when leases are assigned from a large, well-capitalized company to a smaller, less-capitalized company.

We recommend that the Director, Bureau of Land Management:

1. Ensure that the required reviews of the financial liability of all lessees, especially when leases are assigned from large, well-capitalized companies to smaller, less-capitalized companies, are performed.

Bureau of Indian Affairs Response

In the August 2, 2001, response (Appendix 4) from the Assistant Secretary for Indian Affairs, the BIA concurred in part with Recommendation 1 and offered an alternative solution, concurred with the intent of Recommendation 2 and requested an opinion from the Office of the Solicitor, and concurred with Recommendation 3. Based on the response and additional information submitted, Recommendations 1, 2, and 3 are considered resolved but not implemented. The BIA could not provide a target date for completion of its alternative actions for Recommendation 2 because it must first receive the requested opinion from the Solicitor (see Appendix 6).

Bureau of Land Management Response and Office of Inspector General Reply

In the August 1, 2001, response (Appendix 5) from the Acting Director, Bureau of Land Management, BLM concurred with the recommendation but stated that its ability to perform the work is constrained by insufficient staff. Based on the response, we considered the recommendation unresolved and request that the BLM reconsider its response (see Appendix 6).

Recommendation 1. Concurrence.

Bureau of Land Management Response. The BLM stated that it does provide the BIA with liability assessment amounts for plugging and reclamation costs on Indian leases, however, its ability to perform this work is affected by insufficient staffing and budget allocations for the individual offices. Consequently, BLM's guidance, Instruction Memorandum No. 2001-147 dated May 14, 2001, recognizes this constraint by stating that the bond adequacy reviews should be performed as workload permits. The BLM further stated that it "will seek additional funding to develop the systems and additional staffing necessary to accomplish these assessments whenever title is transferred on Federal or Indian leases."

Office of Inspector General Reply. Although the BLM concurred with the recommendation, it primarily addressed why it cannot perform this work as needed. The BLM's new Instruction Memorandum (IM) No.2001-147, dated May 14, 2001, requires that bond adequacy reviews be performed when other duties/actions, such as when the administrative officer reviews operating leases or the lease operator requests that a bond be released, occur but not when title is assigned or operating rights are transferred. In

addition, the IM only requires periodic reviews of operating leases rather than the biennial reviews of leases required by the previous IM (No. 90-373).

The BLM's new IM puts its emphasis on performing reviews of idle wells and requiring additional bonding as determined necessary for these wells. While we believe that this approach, if fully implemented, will result in more adequate bonding for idle wells, this method is a more passive approach than our recommended approach. If the BLM identifies the liability and recommends additional bonding when title is assigned or operating rights are transferred, we believe that more of the BLM's idle wells will be properly plugged and abandoned on a regular basis, thereby reducing the requirement of reviewing as many idle wells. We request that the BLM reconsider its response to Recommendation 1.

In accordance with the Departmental Manual (360 DM 5.3), we are requesting the BLM to provide a written response to this report by November 26, 2001. The response should include the information requested in Appendix 6.

Section 5(a) of the Inspector General Act (Public Law 95-542, as amended) requires the Office of Inspector General to list this report in its semiannual report to the Congress.

We appreciate the assistance of BIA and BLM personnel in the conduct of our audit.

Scope of Review

To accomplish our review, we evaluated the adequacy of bonds posted for financial liabilities during fiscal years 1997 and 1998 at three BIA agency offices (Concho, Pawnee, and Wind River Agencies) and associated BLM offices. At the BIA offices, there were 982 active lease files, of which we judgmentally selected and reviewed 10 active leases at each office, for a total of 30 leases. We reviewed the leases to determine whether the Bureaus had (1) performed lease reviews and site inspections, (2) assessed the costs of plugging and abandoning the wells and reclaiming the surface, and (3) evaluated the lessees' financial responsibility prior to approving lease assignments. Additionally, we reviewed 11 canceled leases at the Farmington Indian Minerals Office and Muskogee Regional Office for adequacy of bonds posted.

Our audit was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures considered necessary to accomplish our objective. As part of our audit, we reviewed the Departmental Reports on Accountability for fiscal years 1997 through 1999, which included information required by the Federal Managers' Financial Integrity Act, and the BIA and the BLM annual assurance statements on management controls for fiscal years 1997 through 2000. Based on our review, we determined that none of the weaknesses reported for the Department and the Bureaus were within the objective and scope of our audit. We also reviewed the BIA and the BLM annual performance plans for fiscal year 1999 and determined that neither plan had established goals or measurable outputs of a bond and lease management program.

We also reviewed the BIA and the BLM internal controls over the administration of oil and gas leases and identified weaknesses that exposed the Department to unnecessary liability resulting from companies defaulting on leases on Indian trust lands. These weaknesses and the recommended corrective actions are detailed in the Results of Review section of this report. The recommendations, if implemented, should improve the internal controls in these areas.

Methodology to Estimate Potential Liability

We estimated the \$583.9 million potential liability to the Department for leases on Indian trust lands by multiplying the standard cost to plug and abandon wells, as determined by the BLM for various well depths, by the number of producing, shut-in, or temporarily abandoned wells at each depth. We determined well depth from well log data. We correlated the AFMSS identified wells with well log data obtained from the BIA Division of Energy and Minerals Resources to identify additional information, such as well operator and well status. We eliminated from this data all wells with a status classified as abandoned or in a fee status, that is, no longer a liability to the Government. We reduced the gross estimated potential liability of \$598 million by the current nationwide bonding of \$12.1 million and the \$2 million of collective and individual lease bonds posted at the Concho, Pawnee, and Wind River Agencies. The nationwide bonds as listed by the BIA Division of Trust Services were correlated with the operator according to the AFMSS data to ensure that the bonds were for existing wells and leases.

Classification of Monetary Amounts

| Finding | Amount |
|-------------------------------|------------------------|
| Funds To Be Put to Better Use | \$250,500 ³ |

³Costs to date to plug and abandon eight wells under canceled lease I69IND14700 is \$231,700 as presented in the schedule below and the costs to plug a well under canceled lease 19233 were \$18,800, for total costs of \$250,500. Funds for lease I69IND14700 were obtained from the BLM 5320 Account - Repair of Damaged Lands - Public Lands and funds for lease 19233 were obtained from the BIA's Environmental Clean-up Hazardous Waste Fund.

| Lease No. | Item | Expense | Cost |
|-------------|--|---------|-----------|
| I69IND14700 | USGS Study - to determine the impacts of brine | Actual | \$156,700 |
| | Oklahoma Energy Resources Board - evaluation | Actual | 75,000 |
| | Total Costs | Actual | \$231,700 |

Bureau of Indian Affairs Response

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

AUG 02 2001

Memorandum

To: Assistant Inspector General for Audits

From: Assistant Secretary - Indian Affairs *Neal A. McCall*

Subject: Draft Audit Report on Selected Activities on Bonding for Oil and Gas Leases on Indian Trust Lands (C-IN-MOA-001-99-D)

Thank you for the opportunity to respond to your draft audit report entitled "Selected Activities on Bonding for Oil and Gas Leases on Indian Trust Lands, Bureau of Indian Affairs."

The subject audit reviewed a limited number of active and inactive oil and gas leases for bonding coverage with the objective of determining whether bonding was adequate to protect the Department of the Interior from potential financial liability associated with plugging and abandoning wells plus reclaiming the lands. The draft report includes three recommendations to the Bureau of Indian Affairs (BIA) to improve the administration of bonding for oil and gas leases.

General Comment:

On page 2, the report states that the Bureau of Land Management (BLM) and BIA "acknowledged a reluctance to enforce bonding requirements that might constrain economic development." The BIA does not believe there is a reluctance on its part to enforce existing bonding requirements. Under the concept of maximum economic recovery, the BIA attempts to facilitate oil and gas development in concert with existing regulatory requirements. The BIA's mission includes both promoting economic opportunity and protecting trust assets. Future revisions to trust policies must take both mandates into consideration. We suggest that the sentence be revised to read as follows: Both also acknowledged that delays in obtaining additional bonding on producing leases can result in negative impacts on the continued production of marginal wells.

Recommendations:

Recommendation 1: Ensure that sufficient bonding is obtained to protect the Department from the potential liability for plugging wells and reclaiming the Indian trust lands as determined by the financial liability reviews. The Assistant Secretary should also establish procedures to review the financial capability of oil companies to be responsible for their liabilities, and based on the results of the review, waive the requirement to obtain a bond for the full amount of the estimated liability.

Response: The Bureau concurs with the first part of the recommendation. The current regulations require sufficient bonding. A directive from the Deputy Commissioner of Indian Affairs will be sent to all oil and gas leasing entities in the BIA reminding them of the regulatory requirement to ensure that adequate bonding is in place on producing leaseholds.

The Chief, Division of Energy and Minerals is responsible for preparing the directive for the Deputy Commissioner's signature. The scheduled target date for implementation is October 1, 2001.

The BIA does not concur with the second part of the recommendation. Existing BIA regulations on bonding provide for increasing the amount of the bond. Also, the financial review suggested by the recommendation is not a requirement found in the existing regulations. Implementation of the recommendation would require a significant policy revision and rule making by the BIA. BIA would need to perform an extensive analysis of the staffing and funding needed to perform the suggested financial reviews before a decision could be made.

In lieu of the recommendation, the BIA offers the following alternative actions. Based on our recently completed analysis of trust regulations needing revision, this issue will be evaluated as pertinent regulations are reviewed. In addition, for nationwide leases we propose to determine, with BLM's assistance, the amount of additional bonding necessary to cover potential liabilities resulting from operations on the leasehold. We will send a list of nationwide bond holders to each BIA Regional Director with a request to identify all producing leases within each region that are held by each bond principal. Once that information is obtained, which we project will occur by December 2001, we will send the information to the BLM with a request to provide the BIA with the costs to plug each producing lease. Once this information is obtained, the BIA will contact the holders of the nationwide bonds, as appropriate, and request an increase in bonding. The Chief, Division of Energy and Minerals, will conduct the data call and make the request to the BLM by December 31, 2001.

Recommendation 2: Establish a contingency fund to protect the Department from potential liability in those cases where companies do not have sufficient bonding coverage to plug wells and reclaim the Indian trust lands.

Response: While the BIA agrees with the intent of the recommendation, it has sought the advice of the Office of the Solicitor (SOL) regarding its authority to establish such a fee without legislation.

As noted in the report, the BLM attempted to implement this concept in 1998 and held several public comment periods to explore the issue. The BLM's efforts for a proposed rule have been halted while it undergoes a policy review. Pending the advice of the of the SOL and BLM's ability to issue its regulation, within its current context, the BIA would be agreeable to reviewing its regulations to determine the feasibility of establishing a similar contingency fund.

Recommendation 3: Hold assignors jointly liable when leases are assigned from a large, well-capitalized company to a smaller, less-capitalized company.

Response: The Bureau concurs. Current regulations (25 CFR 211.53(a)) require adequate bonding for assignments. The directive referred to in Recommendation 1 will also remind oil and gas leasing entities in the BIA of the regulatory requirement for adequate bonding on assignments.

The Chief, Division of Energy and Minerals is responsible for preparing the directive for the Deputy Commissioner's signature. The scheduled target date for implementation is October 1, 2001.

Bureau of Land Management Response



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>

JUL 31 2001

In Reply Refer To:
3160 (310)

MEMORANDUM

To: Central Region Audit Manager, Office of Inspector General

Through: Piet deWitt *Piet deWitt* AUG - 1 2001
Acting Assistant Secretary, Land and Minerals Management

From: Acting Director, Bureau of Land Management *M. Hatfield*

Subject: Draft Audit Report on Selected Activities on Bonding for Oil and Gas
Leases on Indian Trust Lands (C-IN-MOA-001-99-D)

Thank you for the opportunity to comment on this draft report. We appreciate the assistance of your staff.

Attached is our response to the recommendation directed specifically at the Bureau of Land Management (BLM). If you have any questions, please contact Jean Fend, BLM Audit Liaison Officer, at 202-452-5153.

Attachment

RESPONSE OF THE BUREAU OF LAND MANAGEMENT

DRAFT AUDIT REPORT

“Selected Activities on Bonding for Oil and Gas Leases on Indian Trust Lands (C-IN-MOA-001-99-D)”

Audit Agency: Office of Inspector General (OIG)

Audit Number: C-IN-MOA-001-99-D

Comments on Audit Text:

Page 10. The reference to Instruction Memorandum (IM) No. 90-373, dated February 23, 1990, does not take into account the two subsequent policy guidance documents. The first additional guidance was issued March 6, 1992, under IM No. 92-149. This guidance required the states to identify well status and bond liability. The most current guidance is contained in IM No. 2001-147, dated May 14, 2001, which requires that each state with an active oil and gas program establish a plan to review idle wells in order to prevent their devolution to orphan well status. Copies of both IMs are attached.

COMMENTS AND RECOMMENDATION

Ensure that required lease reviews determine the liability for plugging and abandonment of wells, and reclamation of lease surface areas. In particular, the Bureau of Land Management (BLM) should ensure that such determinations are completed when leases are assigned from one owner or operator to another. The BLM should provide this information to the Bureau of Indian Affairs (BIA) for establishing sufficient bond amounts.

Response: CONCUR. The BLM does provide the BIA with liability assessment amounts for plugging and reclamation costs associated with wells on Indian leases. Unfortunately, our ability to perform this work is affected by the total workload, and insufficient staffing, and budget allocations for the individual offices. Consequently, our guidance, Instruction Memorandum No. 2001-147, dated May 14, 2001, recognizes this constraint by stating that the work should be accomplished as workload permits. We will seek additional funding to develop the systems and additional staffing necessary to accomplish these assessments whenever title is transferred on Federal or Indian leases.

Responsible Official: Assistant Director, Minerals, Realty and Resource Protection

STATUS OF AUDIT REPORT RECOMMENDATIONS

| Finding/ Recommendation Reference | Status | Action Required |
|---|-------------------------------|--|
| Bureau of Indian Affairs | | |
| 1, 2, and 3 | Resolved; not implemented. | Provide a completion date for Recommendation 2 upon receipt of opinion from the Office of the Solicitor. No further response to the Office of Inspector General is required. The recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. |
| Bureau of Land Management | | |
| 1 | Unresolved | Reconsider the recommendation and provide an action plan that includes a target date and title of the official responsible for implementation. |

**ILLEGAL OR WASTEFUL ACTIVITIES
SHOULD BE REPORTED TO
THE OFFICE OF INSPECTOR GENERAL**

Internet Complaint Form Address

http://www.oig.doi.gov/hotline_form.html

Within the Continental United States

U.S. Department of the Interior
Office of Inspector General
1849 C Street, N.W.
Mail Stop 5341 - MIB
Washington, D.C. 20240-0001

Our 24-hour
Telephone HOTLINE
1-800-424-5081 or
(202) 208-5300

TDD for hearing impaired
(202) 208-2420

Outside the Continental United States

Caribbean Region

U.S. Department of the Interior
Office of Inspector General
Eastern Division - Investigations
4040 Fairfax Drive
Suite 303
Arlington, Virginia 22203

(703) 235-9221

Pacific Region

U.S. Department of the Interior
Office of Inspector General
Guam Field Pacific Office
415 Chalan San Antonio
Baltej Pavilion, Suite 306
Agana, Guam 96911

(671) 647-6060

HOTLINE

U.S. Department of the Interior
Office of Inspector General
1849 C Street, NW
Mail Stop 5341- MIB
Washington, D.C. 20240-0001

Toll Free Number
1-800-424-5081

Commercial Numbers
(202) 208-5300
TDD (202) 208-2420

